

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE UNITED STATES OF AMERICA, ex.
Rel. AHMED ZAKY,

Plaintiff,

-v-

No. 12-CV-5219-LTS-JCF

VISITING NURSE SERVICE OF NEW
YORK CHOICE HEALTH PLANS,

Defendant.

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ORDER

Ahmed Zaky, the relator, filed this qui tam action pursuant to the False Claims Act, 31 U.S.C. § 3729 et seq., on July 5, 2012. Following the Government's statement on December 9, 2016, that it declined to intervene in the above-captioned action, this Court ordered the Complaint unsealed on January 20, 2017. On February 9, 2017, this Court granted the motion of Mr. Zaky's counsel to withdraw and gave Mr. Zaky until April 10, 2017, to secure new counsel. To date, Mr. Zaky has not secured new counsel. As a relator may not litigate a qui tam action pro se, Magistrate Judge James C. Francis IV ordered Mr. Zaky to secure new representation by May 31, 2017, and stated that if he did not do so, the case would be dismissed. (April 11, 2017, Order, Docket Entry No. 38.) On June 6, 2017, Magistrate Judge Francis issued a Report and Recommendation (the "Report") recommending that the action be dismissed without prejudice to being refiled by the Government or by Mr. Zaky, should he obtain counsel. No objections to the Report have been filed by either party.

When reviewing a report and recommendation, the Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C.S. § 636(b)(1) (C) (LexisNexis 2016). “To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” Wilds v. United Parcel Service, Inc., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (internal citations and quotation marks omitted).

Having reviewed Magistrate Judge Francis’ thorough and well-reasoned Report, to which no objection has been made, the Court finds no clear error. Therefore, the Court adopts the Report in its entirety. Accordingly, the qui tam action is dismissed without prejudice. The Clerk of Court is directed to enter judgment accordingly and close this case.

SO ORDERED.

Dated: New York, New York
July 17, 2017

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
United States District Judge

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